

Kirkwood Maintenance Station
Alpine Co.

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

Mr. Nathan S. Whaley
Vice President, Development
Kirkwood Mountain Resort
P.O. Box 1
Kirkwood, CA 95646



Amador County Recorder
Sheldon D. Johnson
DOC- 2008-0010436-00

Check Number 1022

REQD BY NATHAN WHALEY

Tuesday, DEC 23, 2008 14:59:55

Ttl Pd \$40.00

Nbr-0000173868

CT2/R1/1-12

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: A limited portion of Amador County Assessor's Parcel number 026-270-024, also known as 33601 Loop Road, Kirkwood, California 95646

This Covenant and Agreement ("Covenant") is made by and between Kirkwood Mountain Resort (the "Covenantor"), the current owner of property situated in Kirkwood, County of Amador, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California Regional Water Quality Control Board, Central Valley Region (the "Water Board"). The Covenantor and the Water Board, collectively referred to as the "Parties", hereby agree that the use of a limited portion of the Property, as described in Exhibit "B-1" and shown on Exhibit "B-2", be restricted as set forth in this Covenant.

ARTICLE I STATEMENT OF FACTS

1.01. The Property is described in Exhibit "A", attached hereto and incorporated herein by this reference and is more specifically described as Amador County Assessor's Parcel number 026-270-024, also known as 33601 Loop Road, Kirkwood, California.

1.02. This Covenant applies to a limited portion of the Property, as described in Exhibit "B-1" and shown on Exhibit "B-2", that was impacted by petroleum hydrocarbons including total petroleum hydrocarbons as gasoline (TPHg) and total petroleum hydrocarbons as diesel (TPHd), hereinafter the "Environmental Restriction Area". The Environmental Restriction Area is located adjacent and east of the existing maintenance building.

1.03. Soil at the Environmental Restriction Area was contaminated by petroleum hydrocarbons from past operation of two underground storage tanks (USTs) and one aboveground storage tank (AST).

Two USTs and one AST were removed from the Property in 1999 and the majority of the impacted soils were removed during the excavation of an area measuring 100 feet long by 35 to 65 feet wide to a maximum depth of 15 feet ("Site Remediation").

Approximately 2,850 tons of petroleum hydrocarbon-impacted soil was removed and properly disposed of offsite during the Site Remediation.

Further excavation was not pursued due to the proximity of the existing maintenance building, buried utilities and other improvements. Any remaining impacted soil is not likely to pose a significant threat to groundwater quality based upon the completed removal of the majority of soil source impacts, the presence of structures and pavement minimizing surface water infiltration, at least 10 feet of vertical separation between any remaining impacted soil and seasonally high groundwater levels, and the lack of significant detections in downgradient groundwater monitoring wells. Impacted soil may pose a health threat to subsurface workers.

1.04. A human health risk assessment was performed in 2006 to evaluate potential soil vapor intrusion risk to indoor air for current site commercial workers and hypothetical future site residents. The results of the risk assessment show that there is not an excess risk to human health (cancer or non-carcinogenic risks) for potential soil vapor intrusion to indoor air under either a residential or commercial land use scenario due to the presence of contaminants of concern in soil and groundwater beneath the Property.

Any residual petroleum hydrocarbons remaining in the subsurface soils of the Environmental Restriction Area are primarily TPHd, and to a lesser extent TPHg, and are limited to between 4 and 12 feet below ground surface. Based on historical analytical data, TPHd and TPHg impacts in soil ranged from 8.3 to 13,000 milligrams per kilogram (mg/kg) and 4.6 to 2,400 mg/kg, respectively. The restrictions presented in Article IV are required to prevent subsurface workers from exposure to any remaining petroleum hydrocarbon impacted soils at the Environmental Restriction Area.

1.05. Twelve (12) groundwater monitoring wells were installed in proximity to the Environmental Restriction Area and down gradient of the Environmental Restriction Area. Groundwater has been monitored from 1999 to present. In 2005, three (3) additional groundwater monitoring wells were installed to replace four (4) wells that could not be located. Groundwater was encountered at depths ranging from 2.5 to 38 feet in proximity to the Environmental Restriction Area. TPHg and/or TPHd impacts in groundwater have predominantly been reported for two groundwater monitoring well locations (MW-2b and MW-6). Laboratory analytical results for TPHg and TPHd have ranged from 130 micrograms per liter to below laboratory method reporting limits for wells MW-2b and MW-6 since 2005 to present. Constituents of concern have not been reported in the remaining groundwater monitoring wells dating back to June 2005, except for anomalous detections of tertiary butyl ether. The results of the risk assessment show that there is not an excess risk to human health (cancer or non-carcinogenic risks) for potential soil vapor intrusion to indoor air under either a residential or commercial land use scenario due to the presence of contaminants of concern in groundwater beneath the Property.

1.06. TPHg and TPHd are potentially present in soils at levels exceeding the San Francisco Bay RWQCB's Tier 1 Environmental Screening Levels (ESLs) Surfer (Cal-EPA, Nov. 2007 Interim Final Rev. (Revised May 2008)) commercial exposure level of 83 mg/kg. Any impacted soils are at depths greater than four (4) feet and are located beneath areas paved with concrete.

Subject to the terms of this Covenant, the Water Board has concurred that (1) the majority of contamination mass in soil was removed during excavation activities in 1999; (2) there are no potential sensitive receptors within 500 feet of the any site-related petroleum hydrocarbon impacts; (3) any residual petroleum hydrocarbon impacts in soil do not pose an ongoing threat to groundwater quality; (4) the groundwater plume is stable and shrinking; (5) soil concentrations have exceeded the Tier 1 ESL of 83 mg/kg and such concentrations may pose a human health risk to subsurface workers; and (6) there is not an excess risk to human health (carcinogenic or non-carcinogenic) from potential soil vapor intrusion to indoor air under either a residential or commercial land use scenario due to the presence of any impacts in soil or groundwater beneath the Property. Therefore, no further action is required at the Property as set forth in the Water Board's correspondence dated September 25, 2007.

ARTICLE II DEFINITIONS

2.01. Water Board. "Water Board" means the California Central Valley Regional Water Quality Control Board and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Environmental Restriction Area.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy all or any portion of the Environmental Restriction Area.

2.04. Property. The Property is described in Exhibit "A" attached hereto and incorporated herein by this reference, and is more specifically described as Amador County Assessor's Parcel number 026-270-024, also known as 33601 Loop Road, Kirkwood, California. Notwithstanding the foregoing, if the boundary lines of the parcel which constitutes the Property are legally adjusted in the future, then following such adjustment, this Covenant shall be deemed to encumber only the parcel(s) that contain all or any portion of the Environmental Restriction Area and the Water Board agrees to execute a quit claim deed in favor of any newly created parcel(s) that do not include any portion of the Environmental Restriction Area.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Environmental Restriction Area shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of and passes with the Environmental Restriction Area, (c) is for the benefit of, and is enforceable by the Water Board. Each and all of the Restrictions are enforceable by the Water Board and by the Owner.

3.02. Binding upon Owners/Occupants. This Covenant binds all Owners of the Environmental Restriction Area, their heirs, successors, and assignees, and the agents, employees, and lessees (that lease the Environmental Restriction Area) of the Owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Environmental Restriction Area are expressly bound hereby for the benefit of the Water Board, and for the benefit of Owner.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Environmental Restriction Area, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Environmental Restriction Area. Giving a copy of this Covenant to such buyer or lessee would satisfy the notice requirements of this Section 3.03.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for the Environmental Restriction Area which are entered into on or after the date this Covenant is recorded in the Official Records of Amador County, California.

3.05. Conveyance of Environmental Restriction Area. Not later than thirty (30) days after any conveyance of any ownership interest in the Environmental Restriction Area (excluding mortgages, liens, and other non-possessory encumbrances, and excluding transfers to affiliated parties), the new Owner shall provide to the Water Board notice of such conveyance. The Water Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Environmental Restriction Area shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

Pavement areas (i.e., parking lot) in association with the above-listed uses are excepted from the above prohibitions.

4.02. Soil Management.

- (a) No activities that will disturb the soil at the Environmental Restriction Area (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed without a Soil Management Plan and a Health and Safety Plan approved by the Water Board with the following exceptions: (i) activities that are within 0-3 feet below ground surface; (ii) activities necessary to address an emergency; or (iii) activities necessary to repair an improvement.

(b) Activities that will disturb the soil at depths greater than 3 feet below ground surface at the Environmental Restriction Area will be conducted by workers with 40-hour health and safety training in accordance with 29 CFR 1910.120. Any contaminated soils brought to the surface at the Environmental Restriction Area by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

(c) The Owner shall provide the Water Board written notice at least fourteen (14) days prior excavating, grading, removal, trenching, filling, earth moving or mining conducted at depths greater than 3 feet below ground surface other than emergency related activities.

4.03. Redevelopment. In the event that the Environmental Restriction Area is no longer used for commercial or industrial uses, the Water Board shall have the right to verify that the Site Remediation is appropriate for the proposed use subject to applicable laws. The Water Board shall provide written approval for all redevelopment activities relating to the Environmental Restriction Area.

4.04. Access for Water Board. The Water Board shall have a reasonable right of entry and access on and across any drive aisles and parking areas for access across the Property to the Environmental Restriction Area, and the reasonable right of entry and access on and across drive aisles, parking areas and landscaped areas within the Environmental Restriction Area for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Water Board in order to protect the public health or safety, or the environment.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to materially comply with any of the Restrictions specifically applicable to it within sixty (60) days after its receipt of written notice from the Water Board that describes a violation of the Restrictions shall be grounds for the Water Board to require that the Covenantor, Owner, or Occupant cease any activities that will disturb soil at the Environmental Restriction Area or any redevelopment activities in the Environmental Restriction Area. Such "activities" may include discontinuation of construction activities or the modification or removal of improvements, including buildings, roads, driveways, and paved parking areas. Any material violation of this Covenant which is not cured within sixty (60) days after the Covenantor, Owner, or Occupant's receipt of written notice from the Water Board that describes the violation of this Covenant shall be grounds for the Water Board to file an action as provided by law. If the material violation is such that it cannot be cured within sixty (60) days, then the Water Board agrees to refrain from filing any action if, within sixty (60) days of Covenantor, Owner, or Occupant submits a request for written approval from the Water Board of a plan to cure the material violation, commences to cure such material violation upon receipt of the Water Board's written approval, and diligently continues to pursue the cure thereafter until it is completed. Nothing in this Covenant shall limit the Water Board's authority under Division 7 (commencing with section 13000) of the Water Code or other applicable laws.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Water Board for a written variance from the provisions of this Covenant as they apply to all or any portion of the Property.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Water Board for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Notwithstanding the foregoing, this Covenant, including the Restrictions, shall terminate upon completion of any further assessment that indicates any remaining contamination has decreased to a level that does not pose a significant threat to human health; or upon completion of remediation activities required by the Water Board pursuant to Section 4.03 that decreases any such remaining soil and/or groundwater contamination to a level that does not pose a significant threat to human health.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Water Board in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Water Board References. All references to the Water Board include successor agencies/Water Boards or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Amador within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

Vice President, Development
Kirkwood Mountain Resort
P.O. Box 1
Kirkwood, CA 95646

Central Valley Regional Water Quality Control Board
Attn: UST Enforcement Section
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

It shall be the responsibility of the person giving notice to verify that the above address is current for the Water Board or successor agency. From and after the date on which any party acquires record fee title to the Environmental Restriction Area, then all notices and demands which are required or permitted to be given to the Covenantor and/or the Owner under this Covenant shall be addressed to such Owner at the address for the mailing of property tax statements for the Environmental Restriction Area as shown in the records of the Amador County Assessor's Office, or to such other place as such Owner may from time to time designate by written notice to the Water Board in accordance with this Section 7.04.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

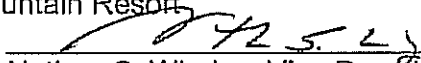
7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

Kirkwood Mountain Resort

By:

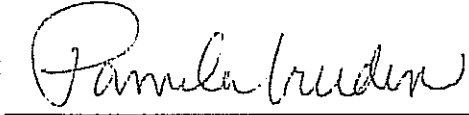

Nathan S. Whaley, Vice President

Date:

12/9/2008

Water Board:

By:


Pamela Creedon, Executive Officer

Date:

12-15-2008

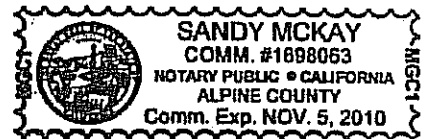
State of California)
County of Alpine) ss.

On December 9, 2008 before me, Sandy McKay, Notary Public, personally appeared Nathan S. Whaley who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sandy McKay (Seal)



GM

1510-008
2/29/07
Page 1 of 1

EXHIBIT A

**DESCRIPTION
(A.P.N. 026-270-024)**

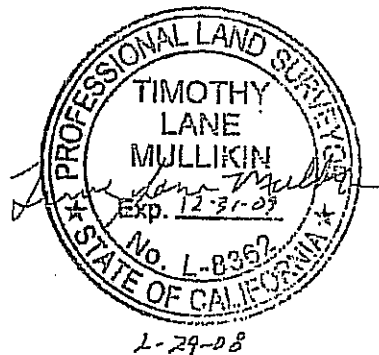
All that real property situate in the County of Amador, State of California, described as follows:

A parcel of land, located within a portion of the Northwest one-quarter of Section 27, Township 10 North, Range 17 East, Mount Diablo Meridian, more particularly described as follows:

That land described in the Certificate of Compliance recorded August 1, 2003 as Document No. 2003-001-0011879 in the office of Recorder, Amador County, California.

Note: Refer this description to your title company
before incorporating into any legal document.

Prepared by: R.O. Anderson Engineering, Inc.
P.O. Box 2229
Minden, Nevada 89423



RECEIVED
SACRAMENTO
CITYWOOD
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EXHIBIT "B-1"

**DESCRIPTION
ENVIRONMENTAL RESTRICTION AREA
WITHIN A PORTION OF LAND DESCRIBED
IN THE CERTIFICATE OF COMPLIANCE
RECORDED IN DOCUMENT NO. 2003-0011879, OFFICE OF RECORDER,
AMADOR COUNTY, CALIFORNIA
(A.P.N. 026-270-024)**

All that real property situate in the County of Amador, State of California, described as follows:

A parcel of land for environmental restriction purposes, located within a portion of the Northwest one-quarter of Section 27, Township 10 North, Range 17 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the most northerly corner of land described in the Corporation Grant Deed to Volcano Telephone Co. filed December 14, 1972 in the office of Recorder, Amador County, California in Book 236, at Page 56, the POINT OF BEGINNING (P.O.B.);

thence North 66°16'22" West, 14.52 feet to the southeast side of a maintenance building;

thence along said southeast side, North 67°32'35" East, 9.72 feet to the most easterly corner of said building;

thence along the northeast side of said building, North 22°27'26" West, 70.58 feet;

thence leaving said building, North 33°29'59" East, 38.43 feet;

thence South 77°23'06" East, 39.92 feet;

thence South 42°29'45" East, 85.16 feet;

thence South 06°09'07" East, 19.04 feet;

thence South 30°41'59" West, 14.22 feet;

thence South 72°48'41" West, 53.85 feet;

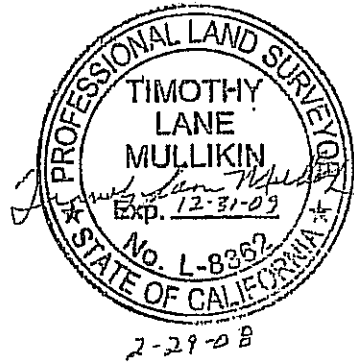
thence North 79°02'14" West, 18.01 feet;

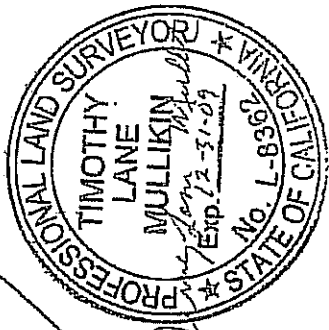
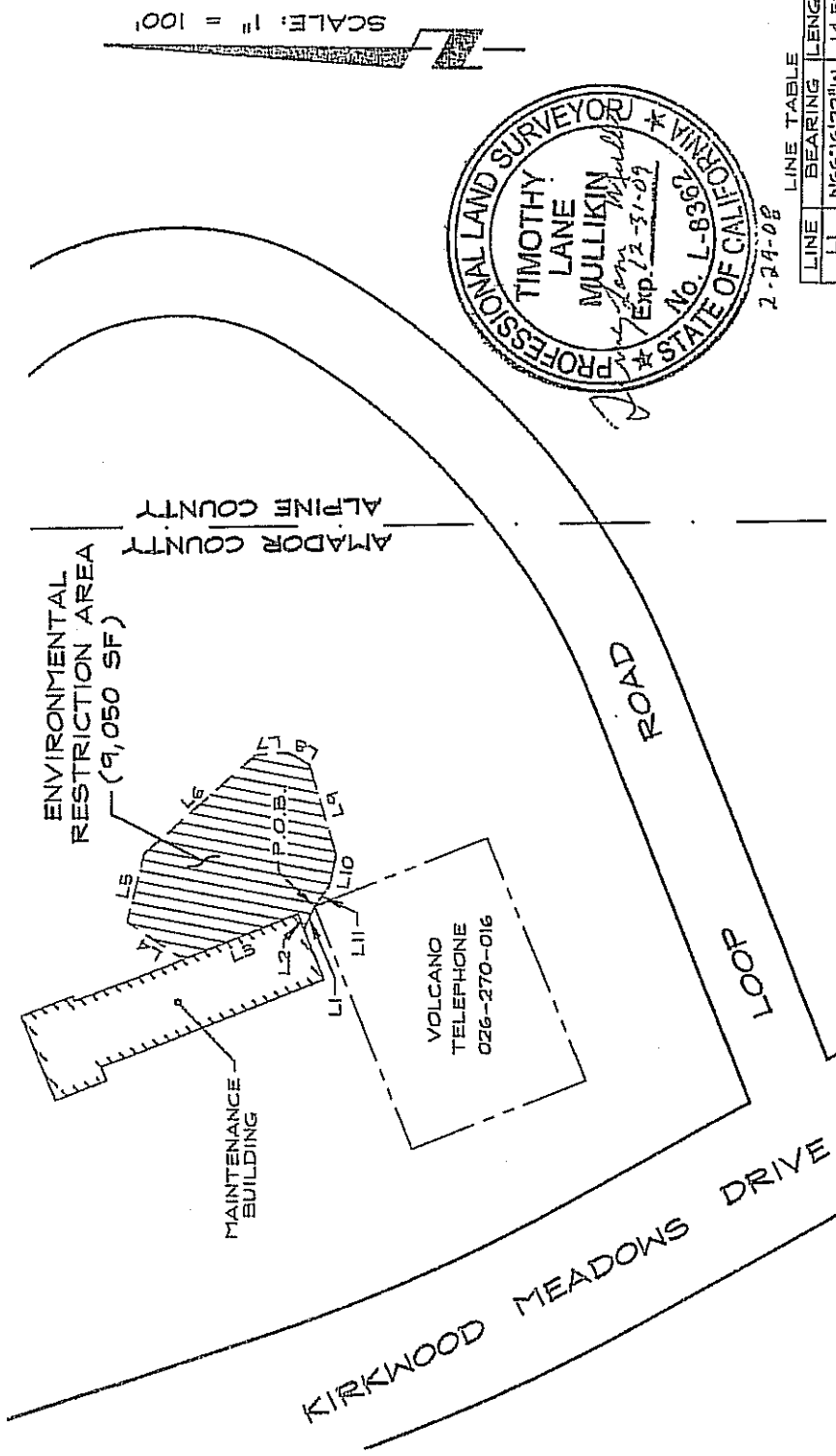
thence North 55°24'25" West, 14.66 feet to the POINT OF BEGINNING, containing 9,050 square feet (0.21 acres), more or less, and as shown on the attached sketch, Exhibit "B-2".

The Basis of Bearing of these descriptions is the Corporation Grant Deed to Volcano Telephone Co. filed December 14, 1972 in the office of Recorder, Amador County, California in Book 236, at Page 56.

Note: Refer this description to your title company
before incorporating into any legal document.

Prepared by: R.O. Anderson Engineering, Inc.
P.O. Box 2229
Minden, Nevada 89423





LINE TABLE

LINE	BEARING	LENGTH
L1	N66°16'22"W	14.52'
L2	N67°32'55"E	9.72'
L3	N22°27'26"W	70.58'
L4	N33°29'59"E	38.43'
L5	S77°23'06"E	39.92'
L6	S42°29'45"E	85.16'
L7	S06°09'07"E	19.04'
L8	S30°41'59"W	14.22'
L9	S72°48'41"W	53.85'
L10	N79°02'14"W	18.01'
L11	N55°24'25"W	14.66'

EXHIBIT "B-2"
ENVIRONMENTAL RESTRICTION AREA
ACROSS A PORTION OF
A.P.N. 026-270-024



RIO Anderson
1003 ESTERILDA AVENUE / POST OFFICE BOX 2219
HINDEN, NEVADA 89423
PHONE: (775) 713-2322 / FAX: (775) 713-7054
WEB SITE: WWW.RIOANDERSON.COM

02/29/08
1510-008 EXH.dwg